

BEFORE THE  
BOARD OF REGISTERED NURSING  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Statement of Issues Against:

**DIANA DAWN SIMS**  
1885 Addison Drive  
Turlock, CA 95382

Case No. 2011-627

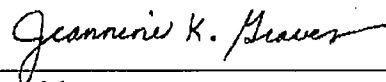
Respondent

**DECISION AND ORDER**

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Registered Nursing, Department of Consumer Affairs, as its Decision in the above entitled matter.

This Decision shall become effective on **May 2, 2011**.

IT IS SO ORDERED **March 30, 2011**.



\_\_\_\_\_  
President  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California

1 KAMALA D. HARRIS  
Attorney General of California  
2 ARTHUR D. TAGGART  
Supervising Deputy Attorney General  
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7 Attorneys for Complainant

**ORIGINAL**

8 **BEFORE THE**  
9 **BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

11 In the Matter of the Statement of Issues  
12 Against:

Case No. 2011-627

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER**

13 **DIANA DAWN SIMS**  
1885 Addison Drive  
14 Turlock, CA 95382

15 Applicant for Registered Nurse License

16 Respondent.

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18  
19 **IT IS HEREBY STIPULATED AND AGREED** by and between the parties to the above-  
20 entitled proceedings that the following matters are true:

21 **PARTIES**

22 1. Louise R. Bailey, MEd, RN ("Complainant") is the Executive Officer of the Board of  
23 Registered Nursing ("Board"), Department of Consumer Affairs. She brought this action solely  
24 in her official capacity and is represented in this matter by Kamala D. Harris, Attorney General of  
25 the State of California, by Leslie A. Burgermyer, Deputy Attorney General.

26 2. Respondent Diana Dawn Sims ("Respondent") is representing herself in this  
27 proceeding and has chosen not to exercise her right to be represented by counsel.

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1 3. On or about April 20, 2010, Respondent filed an application dated April 9, 2010, with  
2 the Board of Registered Nursing to obtain a Registered Nurse License.

3 **JURISDICTION**

4 4. Statement of Issues No. 2011-627 was filed before the Board and is currently pending  
5 against Respondent. The Statement of Issues and all other statutorily required documents were  
6 properly served on Respondent on January 24, 2011. A true and correct copy of Statement of  
7 Issues No. 2011-627 is attached hereto, marked Exhibit A, and incorporated herein by reference.

8 **ADVISEMENT AND WAIVERS**

9 5. Respondent has carefully read and understands the charges and allegations in  
10 Statement of Issues No. 2011-627. Respondent has also carefully read and understands the  
11 effects of this Stipulated Settlement and Disciplinary Order.

12 6. Respondent is fully aware of her legal rights in this matter, including the right to a  
13 hearing on the charges and allegations in the Statement of Issues; the right to be represented by  
14 counsel at her own expense; the right to confront and cross-examine the witnesses against her; the  
15 right to present evidence and to testify on her own behalf; the right to the issuance of subpoenas  
16 to compel the attendance of witnesses and the production of documents; the right to  
17 reconsideration and court review of an adverse decision; and all other rights accorded by the  
18 California Administrative Procedure Act and other applicable laws.

19 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and  
20 every right set forth above.

21 **CULPABILITY**

22 8. Respondent understands and agrees that the charges and allegations in the Statement  
23 of Issues No. 2011-627, if proven at a hearing, constitute cause for denying her application for a  
24 Registered Nurse License.

25 9. For the purpose of resolving the Statement of Issues without the expense and  
26 uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could  
27 establish a factual basis for the charges in the Statement of Issues, and that Respondent hereby  
28 gives up her right to contest those charges.

10. Respondent agrees that her application for a registered nurse license is subject to denial and she agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

**RESERVATION**

11. The admissions made by Respondent herein are only for the purposes of this proceeding, or any other proceedings in which the Board or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding.

**CONTINGENCY**

12. This stipulation shall be subject to approval by the Board. Respondent understands and agrees that counsel for Complainant and the staff of the Board may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent. By signing the stipulation, Respondent understands and agrees that she may not withdraw her agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

13. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

14. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

15. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following

Disciplinary Order:

**DISCIPLINARY ORDER**

**IT IS HEREBY ORDERED**, the application of Respondent Diana Dawn Sims ("Respondent") for licensure is hereby granted. Upon successful completion of the licensure examination and all other licensing requirements, a registered nurse license shall be issued to Respondent. Said license shall immediately be revoked, the order of revocation stayed, and Respondent placed on probation for a period of three (3) years on the following conditions:

**Severability Clause.** Each condition of probation contained herein is a separate and distinct condition. If any condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other applications thereof, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

1. **Obey All Laws.** Respondent shall obey all federal, state, and local laws. A full and detailed account of any and all violations of law shall be reported by Respondent to the Board in writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with this condition, Respondent shall submit completed fingerprint forms and fingerprint fees within forty-five (45) days of the effective date of the Decision, unless previously submitted as part of the licensure application process.

**Criminal Court Orders.** If Respondent is under criminal court orders, including probation or parole, and the order is violated, this shall be deemed a violation of these probation conditions, and may result in the filing of an accusation and/or petition to revoke probation.

2. **Comply with the Board's Probation Program.** Respondent shall fully comply with the conditions of the Probation Program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of the Respondent's compliance with the Board's Probation Program. Respondent shall inform the Board in writing within no

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more than fifteen (15) days of any address change and shall at all times maintain an active, current license status with the Board, including during any period of suspension.

Upon successful completion of probation, Respondent's license shall be fully restored.

3. **Report in Person.** Respondent, during the period of probation, shall appear in person at interviews and/or meetings as directed by the Board or its designated representatives.

4. **Residency, Practice, or Licensure Outside of State.** Periods of residency or practice as a registered nurse outside of California shall not apply toward a reduction of this probation time period. Respondent's probation is tolled if and when she resides outside of California. Respondent must provide written notice to the Board within fifteen (15) days of any change of residency or practice outside the state, and within thirty (30) days prior to re-establishing residency or returning to practice in this state.

Respondent shall provide a list of all states and territories where she has ever been licensed as a registered nurse, vocational nurse, or practical nurse. Respondent shall further provide information regarding the status of each license and any changes in such license status during the term of probation. Respondent shall inform the Board if she applies for or obtains a new nursing license during the term of probation.

5. **Submit Written Reports.** Respondent, during the period of probation, shall submit or cause to be submitted such written reports and/or declarations and verifications of actions under penalty of perjury, as required by the Board. These reports and/or declarations shall contain statements relative to Respondent's compliance with all the conditions of the Board's Probation Program. Respondent shall immediately execute all release of information forms as may be required by the Board or its representatives.

Respondent shall provide a copy of this Decision to the nursing regulatory agency in every state and territory in which she has a registered nurse license.

6. **Function as a Registered Nurse.** Respondent, during the period of probation, shall engage in the practice of registered nursing in California for a minimum of twenty-four (24) hours per week for six (6) consecutive months or as determined by the Board.

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1 For purposes of compliance with this section, "engage in the practice of registered nursing"  
2 may include, when approved by the Board, volunteer work as a registered nurse, or work in any  
3 non-direct patient care position that requires licensure as a registered nurse.

4 The Board may require that advanced practice nurses engage in advanced practice nursing  
5 for a minimum of twenty-four (24) hours per week for six (6) consecutive months or as  
6 determined by the Board.

7 If Respondent has not complied with this condition during the probationary term, and  
8 Respondent has presented sufficient documentation of her good faith efforts to comply with this  
9 condition, and if no other conditions have been violated, the Board, in its discretion, may grant an  
10 extension of Respondent's probation period up to one (1) year without further hearing in order to  
11 comply with this condition. During the one (1) year extension, all original conditions of  
12 probation shall apply.

13 **7. Employment Approval and Reporting Requirements.** Respondent shall obtain  
14 prior approval from the Board before commencing or continuing any employment, paid or  
15 voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all  
16 performance evaluations and other employment related reports as a registered nurse upon request  
17 of the Board.

18 Respondent shall provide a copy of this Decision to her employer and immediate  
19 supervisors prior to commencement of any nursing or other health care related employment.

20 In addition to the above, Respondent shall notify the Board in writing within seventy-two  
21 (72) hours after she obtains any nursing or other health care related employment. Respondent  
22 shall notify the Board in writing within seventy-two (72) hours after she is terminated or  
23 separated, regardless of cause, from any nursing, or other health care related employment with a  
24 full explanation of the circumstances surrounding the termination or separation.

25 **8. Supervision.** Respondent shall obtain prior approval from the Board regarding  
26 Respondent's level of supervision and/or collaboration before commencing or continuing any  
27 employment as a registered nurse, or education and training that includes patient care.

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Respondent shall practice only under the direct supervision of a registered nurse in good standing (no current discipline) with the Board, unless alternative methods of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are approved.

Respondent's level of supervision and/or collaboration may include, but is not limited to, the following:

a. Maximum: The individual providing supervision and/or collaboration is present in the patient care area or in any other work setting at all times.

b. Moderate: The individual providing supervision and/or collaboration is in the patient care unit or in any other work setting at least half the hours Respondent works.

c. Minimum: The individual providing supervision and/or collaboration has person-to-person communication with Respondent at least twice during each shift worked.

d. Home Health Care: If Respondent is approved to work in the home health care setting, the individual providing supervision and/or collaboration shall have person-to-person communication with Respondent as required by the Board each work day. Respondent shall maintain telephone or other telecommunication contact with the individual providing supervision and/or collaboration as required by the Board during each work day. The individual providing supervision and/or collaboration shall conduct, as required by the Board, periodic, on-site visits to patients' homes visited by Respondent with or without Respondent present.

**9. Employment Limitations.** Respondent shall not work for a nurse's registry, in any private duty position as a registered nurse, a temporary nurse placement agency, a traveling nurse, or for an in-house nursing pool.

Respondent shall not work for a licensed home health agency as a visiting nurse unless the registered nursing supervision and other protections for home visits have been approved by the Board. Respondent shall not work in any other registered nursing occupation where home visits are required.

Respondent shall not work in any health care setting as a supervisor of registered nurses. The Board may additionally restrict Respondent from supervising licensed vocational nurses and/or unlicensed assistive personnel on a case-by-case basis.



Respondent shall not work as a faculty member in an approved school of nursing or as an instructor in a Board approved continuing education program.

Respondent shall work only on a regularly assigned, identified, and predetermined worksite(s) and shall not work in a float capacity.

If Respondent is working or intends to work in excess of forty (40) hours per week, the Board may request documentation to determine whether there should be restrictions on the hours of work.

10. **Complete a Nursing Course(s).** Respondent, at her own expense, shall enroll and successfully complete a course or courses relevant to the practice of registered nursing no later than six (6) months prior to the end of her probationary term.

Respondent shall obtain prior approval from the Board before enrolling in the course(s). Respondent shall submit to the Board the original transcripts or certificates of completion for the above required course or courses. The Board shall return the original documents to Respondent after photocopying them for its records.

11. **Violation of Probation.** If Respondent violates the conditions of her probation, the Board after giving Respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline, that is, denial of Respondent's application for licensure.

If during the period of probation, an accusation or petition to revoke probation has been filed against Respondent's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against Respondent's license, the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the Board.

12. **License Surrender.** During Respondent's term of probation, if she ceases practicing due to retirement, health reasons, or is otherwise unable to satisfy the conditions of probation, Respondent may surrender her license to the Board. The Board reserves the right to evaluate Respondent's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances, without further hearing.

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1 Upon formal acceptance of the tendered license and wall certificate, Respondent will no longer be  
2 subject to the conditions of probation.

3 Surrender of Respondent's license shall be considered a disciplinary action and shall  
4 become a part of Respondent's license history with the Board. A registered nurse whose license  
5 has been surrendered may petition the Board for reinstatement no sooner than the following  
6 minimum periods from the effective date of the disciplinary decision:

7 a. Two (2) years for reinstatement of a license that was surrendered for any reason other  
8 than a mental or physical illness; or

9 b. One (1) year for a license surrendered for a mental or physical illness.

10 **13. Physical Examination.** Within forty-five (45) days of the effective date of this  
11 Decision, Respondent, at her expense, shall have a licensed physician, nurse practitioner, or  
12 physician assistant, who is approved by the Board before the assessment is performed, submit an  
13 assessment of the Respondent's physical condition and capability to perform the duties of a  
14 registered nurse. Such an assessment shall be submitted in a format acceptable to the Board. If  
15 medically determined, a recommended treatment program will be instituted and followed by the  
16 Respondent with the physician, nurse practitioner, or physician assistant providing written reports  
17 to the Board on forms provided by the Board.

18 If Respondent is determined to be unable to practice safely as a registered nurse, the  
19 licensed physician, nurse practitioner, or physician assistant making this determination shall  
20 immediately notify the Board and Respondent by telephone, and the Board shall request that the  
21 Attorney General's Office prepare an accusation or petition to revoke probation. Respondent  
22 shall immediately cease practice and shall not resume practice until notified by the Board.  
23 During this period of suspension, Respondent shall not engage in any practice for which a license  
24 issued by the Board is required until the Board has notified Respondent that a medical  
25 determination permits Respondent to resume practice. This period of suspension will not apply to  
26 the reduction of this probationary time period.

27 If Respondent fails to have the above assessment submitted to the Board within the forty-  
28 five (45)-day requirement, Respondent shall immediately cease practice and shall not resume

1 practice until notified by the Board. This period of suspension will not apply to the reduction of  
2 this probationary time period. The Board may waive or postpone this suspension only if  
3 significant, documented evidence of mitigation is provided. Such evidence must establish good  
4 faith efforts by Respondent to obtain the assessment, and a specific date for compliance must be  
5 provided. Only one such waiver or extension may be permitted.

6 **14. Participate in Treatment/Rehabilitation Program for Chemical Dependence.**

7 Respondent, at her expense, shall successfully complete during the probationary period or shall  
8 have successfully completed prior to commencement of probation, a Board-approved  
9 treatment/rehabilitation program of at least six (6) months duration. As required, reports shall be  
10 submitted by the program on forms provided by the Board. If Respondent has not completed a  
11 Board-approved treatment/rehabilitation program prior to commencement of probation,  
12 Respondent, within forty-five (45) days from the effective date of the Decision, shall be enrolled  
13 in a program. If a program is not successfully completed within the first nine (9) months of  
14 probation, the Board shall consider Respondent in violation of probation.

15 Based on Board recommendation, each week Respondent shall be required to attend at least  
16 one (1), but no more than five (5), 12-step recovery meetings or equivalent (e.g., Narcotics  
17 Anonymous, Alcoholics Anonymous, etc.) and a nurse support group as approved and directed by  
18 the Board. If a nurse support group is not available, an additional 12-step meeting or equivalent  
19 shall be added. Respondent shall submit dated and signed documentation confirming such  
20 attendance to the Board during the entire period of probation.

21 Respondent shall continue with the recovery plan recommended by the treatment or  
22 rehabilitation program or a licensed mental health examiner and/or other ongoing recovery  
23 groups.

24 **15. Abstain from Use of Psychotropic (Mood-Altering) Drugs.** Respondent shall

25 completely abstain from the possession, injection, or consumption by any route of any and all  
26 psychotropic (mood-altering) drugs, including alcohol, except when the same are ordered by a  
27 health care professional legally authorized to do so as part of documented medical treatment.  
28 Respondent shall have sent to the Board, in writing and within fourteen (14) days, by the

1 prescribing health professional, a report identifying the medication, dosage, the date the  
2 medication was prescribed, the Respondent's prognosis, the date the medication will no longer be  
3 required, and the effect on the recovery plan, if appropriate.

4 Respondent shall identify for the Board a single physician, nurse practitioner, or physician  
5 assistant who shall be aware of Respondent's history of substance abuse and will coordinate and  
6 monitor any prescriptions for Respondent for dangerous drugs, controlled substances or mood-  
7 altering drugs. The coordinating physician, nurse practitioner, or physician assistant shall report  
8 to the Board on a quarterly basis Respondent's compliance with this condition. If any substances  
9 considered addictive have been prescribed, the report shall identify a program for the time limited  
10 use of any such substances.

11 The Board may require the single coordinating physician, nurse practitioner, or physician  
12 assistant to be a specialist in addictive medicine, or to consult with a specialist in addictive  
13 medicine.

14 16. **Submit to Tests and Samples.** Respondent, at her expense, shall participate in a  
15 random, biological fluid testing or a drug screening program which the Board approves. The  
16 length of time and frequency will be subject to approval by the Board. Respondent is responsible  
17 for keeping the Board informed of Respondent's current telephone number at all times.  
18 Respondent shall also ensure that messages may be left at the telephone number when she is not  
19 available and ensure that reports are submitted directly by the testing agency to the Board, as  
20 directed. Any confirmed positive finding shall be reported immediately to the Board by the  
21 program and Respondent shall be considered in violation of probation.

22 In addition, Respondent, at any time during the period of probation, shall fully cooperate  
23 with the Board or any of its representatives, and shall, when requested, submit to such tests and  
24 samples as the Board or its representatives may require for the detection of alcohol, narcotics,  
25 hypnotics, dangerous drugs, or other controlled substances.

26 If Respondent has a positive drug screen for any substance not legally authorized and not  
27 reported to the coordinating physician, nurse practitioner, or physician assistant, and the Board  
28 files a petition to revoke probation or an accusation, the Board may suspend Respondent from

1 practice pending the final decision on the petition to revoke probation or the accusation. This  
2 period of suspension will not apply to the reduction of this probationary time period.

3 If Respondent fails to participate in a random, biological fluid testing or drug screening  
4 program within the specified time frame, Respondent shall immediately cease practice and shall  
5 not resume practice until notified by the Board. After taking into account documented evidence  
6 of mitigation, if the Board files a petition to revoke probation or an accusation, the Board may  
7 suspend Respondent from practice pending the final decision on the petition to revoke probation  
8 or the accusation. This period of suspension will not apply to the reduction of this probationary  
9 time period.

10 **17. Mental Health Examination.** Respondent shall, within forty-five (45) days of the  
11 effective date of this Decision, have a mental health examination including psychological testing  
12 as appropriate to determine her capability to perform the duties of a registered nurse. The  
13 examination will be performed by a psychiatrist, psychologist or other licensed mental health  
14 practitioner approved by the Board. The examining mental health practitioner will submit a  
15 written report of that assessment and recommendations to the Board. All costs are the  
16 responsibility of Respondent. Recommendations for treatment, therapy or counseling made as a  
17 result of the mental health examination will be instituted and followed by Respondent.

18 If Respondent is determined to be unable to practice safely as a registered nurse, the  
19 licensed mental health care practitioner making this determination shall immediately notify the  
20 Board and Respondent by telephone, and the Board shall request that the Attorney General's  
21 Office prepare an accusation and/or petition to revoke probation. Respondent shall immediately  
22 cease practice and may not resume practice until notified by the Board. During this period of  
23 suspension, Respondent shall not engage in any practice for which a license issued by the Board  
24 is required, until the Board has notified Respondent that a mental health determination permits  
25 Respondent to resume practice. This period of suspension will not apply to the reduction of this  
26 probationary time period.

27 If Respondent fails to have the above assessment submitted to the Board within the forty-  
28 five (45)-day requirement, Respondent shall immediately cease practice and shall not resume

1 practice until notified by the Board. This period of suspension will not apply to the reduction of  
2 this probationary time period. The Board may waive or postpone this suspension only if  
3 significant, documented evidence of mitigation is provided. Such evidence must establish good  
4 faith efforts by Respondent to obtain the assessment, and a specific date for compliance must be  
5 provided. Only one such waiver or extension may be permitted.

6 18. **Therapy or Counseling Program.** Respondent, at her expense, shall participate in  
7 an on-going counseling program until such time as the Board releases her from this requirement  
8 and only upon the recommendation of the counselor. Written progress reports from the counselor  
9 will be required at various intervals.

10 **ACCEPTANCE**

11 I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the  
12 stipulation and the effect it will have on my Registered Nurse License. I enter into this Stipulated  
13 Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be  
14 bound by the Decision and Order of the Board of Registered Nursing.

15  
16 DATED:

1/31/11

*Diana Dawn Sims*

DIANA DAWN SIMS

Respondent

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ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board of Registered Nursing of the Department of Consumer Affairs.

DATED: 2-1-2011

Respectfully submitted,

KAMALA D. HARRIS  
Attorney General of California  
ARTHUR D. TAGGART  
Supervising Deputy Attorney General

  
LESLIE A. BURGERMYER  
Deputy Attorney General  
*Attorneys for Complainant*

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## **Exhibit A**

**Statement of Issues No. 2011-627**



1 KAMALA D. HARRIS  
Attorney General of California  
2 ARTHUR D. TAGGART  
Supervising Deputy Attorney General  
3 LESLIE A. BURGERMYER  
Deputy Attorney General  
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Sacramento, CA 94244-2550  
6 Telephone: (916) 324-5337  
Facsimile: (916) 327-8643  
7 Attorneys for Complainant

8 **BEFORE THE**  
**BOARD OF REGISTERED NURSING**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
10 **STATE OF CALIFORNIA**

11 In the Matter of the Statement of Issues Against:

Case No. 2011-627

12 **DIANA DAWN SIMS**

13 1885 Addison Drive  
14 Turlock, CA 95382

**STATEMENT OF ISSUES**

15 Applicant for Registered Nurse License

16 Respondent.

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19  
20 Complainant alleges:

21 **PARTIES**

22 1. Louise R. Bailey, M.Ed, RN ("Complainant") brings this Statement of Issues solely in  
23 her official capacity as the Executive Officer of the Board of Registered Nursing ("Board"),  
24 Department of Consumer Affairs.

25 2. On or about April 20, 2010, the Board received an application for a registered nurse  
26 license from Diana Dawn Sims ("Respondent"). On or about April 14, 2010, Respondent  
27 certified under penalty of perjury to the truthfulness of all statements, answers, and  
28 representations in the application. The Board denied the application on August 9, 2010.

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4. Code section 480 states, in pertinent part:

(1) Been convicted of a crime: A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(B) The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which application is made.

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof. ...

In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or

1 in a manner dangerous or injurious to himself or herself, any other person, or the  
2 public or to the extent that such use impairs his or her ability to conduct with safety to  
3 the public the practice authorized by his or her license.

4 (c) Be convicted of a criminal offense involving the prescription,  
5 consumption, or self administration of any of the substances described in subdivisions  
6 (a) and (b) of this section . . .

7 6. Code section 2765 states:

8 A plea or verdict of guilty or a conviction following a plea of nolo  
9 contendere made to a charge substantially related to the qualifications, functions and  
10 duties of a registered nurse is deemed to be a conviction within the meaning of this  
11 article. The board may order the license or certificate suspended or revoked, or may  
12 decline to issue a license or certificate, when the time for appeal has elapsed, or the  
13 judgment of conviction has been affirmed on appeal or when an order granting  
14 probation is made suspending the imposition of sentence, irrespective of a subsequent  
15 order under the provisions of Section 1203.4 of the Penal Code allowing such person  
16 to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside  
17 the verdict of guilty, or dismissing the accusation, information or indictment.

#### 18 FIRST CAUSE FOR DENIAL

##### 19 (Criminal Conviction)

20 7. Respondent's application is subject to denial pursuant to Code sections 2736, 2761,  
21 subdivision (f), 480, subdivision (a)(1), and 480, subdivision (a)(3)(A), in that on or about June  
22 25, 2010, in the criminal proceeding titled *People v. Diana Dawn Sims* (Super. Ct. San Joaquin  
23 County, 2010, Case No. MM120056A), Respondent pled nolo contendere to violating Vehicle  
24 Code section 23152, subdivision (b) (driving while having a .08% or higher blood alcohol, a  
25 misdemeanor), a crime substantially related to the qualifications, functions, and duties of a  
26 registered nurse. Respondent's blood alcohol content ("BAC") measured at 0.15%.

27 a. The circumstances of the crime are as follows: On or about January 2, 2010, a  
28 Ripon Police Department peace officer observed Respondent's GMC Yukon traveling  
approximately 20 miles per hour below the posted speed limit and impeding traffic in the right  
lane of Highway 99. He observed Respondent weaving within the lane and repeatedly drifting to  
the right fog line before correcting the vehicle back to the center of the lane. The officer followed  
Respondent's vehicle over a distance of approximately 1.5 miles. The officer activated his code 3  
lights and siren, but Respondent failed to yield and continued driving approximately 50 miles per  
hour on the freeway. After driving another half mile, Respondent finally pulled to the right and

1 stopped her vehicle. The officer contacted Respondent and noticed her slurred speech, red and  
2 watery eyes, slack facial expression, and a strong odor of an alcoholic beverage on her person.  
3 The officer also observed Respondent had a passenger in her vehicle. Respondent admitted to  
4 drinking four or five 12-oz. Bud Lite beers at a local bar. The results of Respondent's EPAS test  
5 was 0.15% BAC.

6 **SECOND CAUSE FOR DENIAL**

7 **(Use of Alcohol to Extent or in Manner  
8 Dangerous or Injurious to Self and Others)**

9 8. Respondent's application for a registered nurse license is subject to denial pursuant to  
10 Code sections 2761, subdivision (a), 2762, subdivision (b), and 480, subdivision (a)(3), in that on  
11 or about January 2, 2010, she used or consumed alcoholic beverages to an extent or in a manner  
12 dangerous or injurious to herself, others, and the public, as set forth in paragraph 7 above.

13 **THIRD CAUSE FOR DENIAL**

14 **(Criminal Conviction Involving Alcohol)**

15 9. Respondent's application for a registered nurse license is subject to denial pursuant to  
16 Code sections 2761, subdivision (a), 2762, subdivision (c), and 480, subdivision (a)(3), in that on  
17 or about June 25, 2010, Respondent was convicted of a criminal offense involving the  
18 consumption of alcoholic beverages, as set forth in paragraph 7 above.

19 **PRAYER**

20 **WHEREFORE**, Complainant requests that a hearing be held on the matters herein alleged,  
21 and that following the hearing, the Board of Registered Nursing issue a decision:

- 22 1. Denying the application of Diana Dawn Sims for a registered nurse license;

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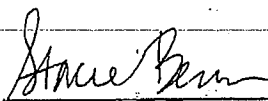
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2. Taking such other and further action as deemed necessary and proper.

DATED:

1-13-2011

*for* 

LOUISE R. BAILEY, M.Ed, RN  
Executive Officer  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California  
*Complainant*

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